

IN THE U.S. PATENT AND TRADEMARK OFFICE

Application No.: 10/017,833
Filing Date: December 12, 2001
Applicant: Alan Glen SOLHEIM et al.
Group Art Unit: 2613
Examiner: Hanh Phan
Title: WAVELENGTH ASSIGNMENT IN AN OPTICAL WDM NETWORK
Attorney Docket: 129250-002052/US/CPA

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT OR, IN
THE ALTERNATIVE TO REVIVE BASED ON UNAVOIDABILITY OR
UNINTENTIONAL ABANDONMENT**

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Mail Stop **PETITION**

January 18, 2009

Sir:

Applicants hereby petition for withdrawal of the holding of abandonment in the above-identified application because Applicants' Response dated September 13, 2008 to the last non-Final Office Action was apparently not forwarded to the Examiner by the Electronic Business Center (EBC).

The Applicants' attorney, John E. Curtin, hereby submits the following statement in support of this Petition:

I. STATEMENT BY APPLICANTS' ATTORNEY IN SUPPORT OF PETITIONS

- 1.) On September 13, 2008 Applicants' attorney filed a Response to a non-Final Office Action dated May 14, 2008 (Office Action) via the USPTO's electronic filing system (*see* copy of electronic acknowledgement bearing EFS ID # 3938582 attached).
- 2.) On or about November 20, 2008 the Examiner assigned to the instant application called the Applicants' attorney to ask whether a Response to the Office Action had been filed. Applicants' attorney responded that he had indeed filed a response.
- 3.) To confirm that the Response was filed, Applicants' attorney contacted the EBC. The EBC confirmed that indeed the Response had been filed on September 13, 2008 using the EFS ID mentioned above. Upon further investigation the EBC determined that it had forwarded the Response to a different Examining Group because the Response, though electronically filed in the instant application, indicated on its face it was responsive to an Office Action in another application.
- 4.) The Applicants' attorney concluded that although a paper copy of the proper response was inserted into his application file, an incorrect response was electronically filed (under the correct application number though).
- 5.) Applicants' attorney apologizes for his error.
- 6.) It is Applicants' attorney's understanding that, if the EBC had followed its normal operating procedure and forwarded the Response on to the instant Examiner, the Examiner would have recognized the error and informed the Applicant, avoiding abandonment of the application.
- 7.) To date the Applicants' attorney has not received a Notice of Abandonment. To avoid any additional delay in examination, however, this Petition was filed.

II. REQUEST & PETITION TO WITHDRAW HOLDING OF ABANDONMENT

Incorporating the statement above, the Applicants respectfully petition for withdrawal of the holding of abandonment in this application.

**APPLICANTS HEREBY PETITION FOR WITHDRAWAL OF THE HOLDING OF
ABANDONMENT IN THIS APPLICATION.**

1. Petition Fee: No Fee is believed due.
2. Reply and/or Fee: The correct Response to the May 14, 2008 Office Action is attached. No fee is believed due.
3. Terminal Disclaimer with disclaimer fee: Because this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

III. PETITION TO REVIVE

In the event the Applicants' Petition to Withdraw is not granted, the Applicants hereby alternatively petition for revival of the above-referenced application. The above-identified application was unavoidably and/or unintentionally abandoned for failure to timely file a response to the Office Action dated May 14, 2008. The entire delay in filing the required reply, namely the response to the Office Action, from the due date for the reply until the filing of this petition was unavoidable and/or unintentional. Thus, the abandonment was unavoidable or unintentional.

**A. APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS UNAVOIDABLY
ABANDONED APPLICATION:**

1. Petition Fee:
The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment for any fee, or credit any overpayment, to Deposit Account No. 50-3777 as well as for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, petition, Reply or extension of time fees.
2. Reply: A Response to the May 14, 2008 Office Action is enclosed.
3. Terminal Disclaimer and fee: Because this utility application was filed on or after June 8, 1995, no terminal disclaimer is required.
4. Statement. The entire delay in filing the required reply from the due

date for the reply until the filing of a grantable petition was unavoidable.

B. **APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS
UNINTENTIONALLY ABANDONED APPLICATION:**

1. **Petition Fee:**

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment for any fee, or credit any overpayment, to Deposit Account No. 50-3777 as well as for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, petition, Reply or extension of time fees.

2. **Reply:** A Response to the May 14, 2008 Office Action is enclosed.

3. **Terminal Disclaimer and fee:** Because this utility application was filed on or after June 8, 1995, no terminal disclaimer is required.

4. **Statement.** The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge any payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time and petition fees.

Date: January 18, 2009

By: /John E. Curtin/
John E. Curtin, Reg. No. 37,602

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